

BOARD OF APPEALS CASE NO. 4809

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BEFORE THE

**APPLICANT: Charles V. Spalding/
Harford County Investors Corp.**

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ZONING HEARING EXAMINER

**REQUEST: Special Exception & variances
to locate a golf/tennis/swim/country club
in the Agricultural District; MD Routes 155
and 156, west of Hopewell Road,
Churchville**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 6/17/98 & 6/24/98

HEARING DATE: August 12, 1998

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Record: 6/20/98 & 6/27/98

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ZONING HEARING EXAMINER'S DECISION

The Applicant is Charles Spalding and the property owner is Harford County Investors Corp. The Applicant is requesting a Special Exception, pursuant to Section 267-53(A)(2) to operate a golf club, driving range, snack shack and maintenance building; a variance to allow the principle access road to be provided from Aldino Road; and a variance to Section 267-41(D)(5)(e) and (6) to disturb the 75 foot non-tidal wetland buffer and to disturb non-tidal wetlands.

The subject parcel is located between MD Route 155, Level Road, and MD Route 156, Aldino Road, west of Hopewell Road. The property is identified on Tax Map 43, Grid 1-B, Parcel 41; Grid 1-C, Parcel 44 and 76; Grid 2-C, part of Parcel 79; and Grid 1-D, part of Parcel 101. All the parcels combined contain 233 acres, more or less, and are zoned Agricultural and General Industrial. The property is all located in the Second Election District.

Mr. Charles Spalding appeared and testified that he has been a realtor and broker since 1950. Mr. Spalding said he is Treasurer of Harford County Investors Corp. and that the subject parcel consists of approximately 233 acres, most of which is zoned agricultural with a small portion being zoned GI. Mr. Spalding testified that the six conditions set forth in the Staff Report were acceptable to the Applicant and he indicated that the Applicant conducted a public information meeting to which all adjoining property owners were invited. He said approximately 40 people attended the meeting and that the Applicant also met with representatives of the Harford County Airpark, an adjoining property owner, and that Bruce Mundie, from the State Aviation Commission also met to discuss their concerns.

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Mr. Spalding went on to explain that as a result of that meeting, the Applicant agreed to construct a runway overrun landscape buffer consisting of 2-3 foot tall evergreen shrubs planted in accordance with Exhibit No. 25. Mr. Spalding also testified that he reviewed the “Limitations, Guides and Standards” set forth in the Zoning Ordinance and as to those areas about which he had knowledge, he felt that the application was consistent with those specific limitations, guides and standards.

Rowan Glidden was admitted as an expert in the field of landscape architecture and land planning. Mr. Glidden reviewed the site plan and described the layout of the golf course, the placement of the building and the topography of the property. Mr. Glidden said the topography the property drains in several different directions which is uniquely adaptable to a golf course because everything is not facing and flowing in the same direction. . . and it’s very unique to have this sort of situation where there are several minor tributaries or beginnings of tributaries to streams in the County.

Mr. Glidden addressed each of the special exception criteria and indicated that the Applicant could comply with each one of the criteria, as set forth in Section 267-53(A)(2). Regarding the variance from the Natural Resource District (NRD) requirements, Mr. Glidden indicated that in the recent past there have been four golf courses approved in Harford County and each of these golf courses obtained NRD variances as part of the approval process. Mr. Glidden indicated that the impact to the wetlands on the property is very minimal. He testified that on this particular site, there are 37.3 acres of Natural Resource District, of which the Applicant proposes to impact 2.5 acres of wetland. Mr. Glidden went through each specific variance and explained the nature of the impact and he said that no wetland area or NRD area would be actually disturbed but only the nature of the wetland would be altered.

Mr. Glidden went on to testified that the golf course is probably significantly less harmful to the Natural Resource District than other principal permitted uses which could occur on the property. Mr. Glidden indicated that agricultural uses allow much greater disturbance in wetland areas and allow plowing and removal of the soil surface of property. Mr. Glidden also testified that the construction of homes on the parcel could allow more significant crossing of the wetland area and destruction of wetland areas.

Mr. Glidden reviewed the specific” Limitations, Guides and Standards” of the Zoning

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Ordinance and indicated that the Applicant would comply with the requirements.

Mr. Kenneth Schmid was admitted as an expert in the field of traffic engineering. Mr. Schmid testified that he had conducted a traffic analysis of the property which was admitted into evidence as Petitioner's Exhibit No. 13. It was Mr. Schmid's opinion that all of the impacted intersections will still operate at acceptable levels of service and that there is no significant traffic impact to the community as a result of the golf course. Mr. Schmid also testified that a golf course generally has significantly less impact than many other types of development.

Mr. Mark Eisner was admitted as an expert witness in the area of hydro-geology. Mr. Eisner indicated that he had conducted an analysis of the water needs generated by the golf course and the availability of water to the golf course. In summary, the golf course has a demand of 84,000 gallons of water per day and the study indicates an available supply of 137,000 gallons per day. Mr. Eisner explained that the study was conducted in full accordance with all of the requirements of the Maryland Department of the Environment and other State agencies. Mr. Eisner went on to explain that there is an exhaustive application, approval and permit process designed to provide protection to adjoining property owners, and he indicated that the Applicant would have to obtain a Water Appropriation Permit issued by the Maryland Department of the Environment.

Mr. Eisner also testified that he had the opportunity to research well yields in the immediate area of the subject parcel and indicated that he found that wells in the area exceed the state-wide average for this type of hard rock geologic terrain. He said the state-wide average is 8 to 9 gallons per minute and that wells near the subject property yield 15 gallons per minute. He testified that this well yield study was based on all wells drilled since 1969, which are part of the MDE computer records. Mr. Eisner indicated that as a hydro-geologist, based on his experience, if he lived in this vicinity, he would not be concerned about the golf course depleting water supply.

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Mr. Anthony McClune, Chief of Current Planning for the Planning and Zoning Department, testified that after reviewing the traffic input study and the environmental assessment report, the Department of Planning and Zoning found that there are unique circumstances on the property and that the Applicant can meet the requirements to justify approval of the special exception and variances.

Mr. David Peterson testified in opposition to the Applicant's request. Mr. Peterson said he was opposed to the request because he did not think that there was a need for another golf course in the County, that he was concerned about the amount of water the golf course would require, that the golf course would raise property values and that the golf course would adversely impact the environment. On cross-examination, Mr. Peterson indicated that he has resided in the area since 1964 and that he has consistently opposed all requests made by Harford County Investors Corp. to do anything on their property.

Gunnar Vandersteur appeared and testified he felt that the County has enough golf courses and he indicated that the application for a golf course may generate a retirement community in the future.

Lawrason Sayre appeared and indicated that most of the testimony concerned the 233-acre tract. Mr. Sayre said the water for the site was proposed to be drawn from wells on another portion of the Applicant's property not included in the 233-acre site.

CONCLUSION:

The Applicant is requesting a special exception, pursuant to Section 267-53(A)(2) of the Harford County Code, which provides:

Country clubs, golf clubs, tennis and swim clubs. These uses may be granted in the AG, R, RR, R1, R2, R3, R4 and GI Districts, provided that:

- (a) No off-street parking or loading area shall be located within any required yard or within twenty-five (25) feet of any parcel boundary.
- (b) Off-street parking and loading areas, swimming pools, and tennis courts shall be screened from adjacent residential lots.
- (c) The principal access shall be provided from an arterial or collector road.

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- (d) No more than twenty percent (20%) of the land area upon which such a use is conducted may be located in the GI District.
- (e) Any outside lighting used to illuminate a use permitted under this section shall be designed, installed and maintained in a manner not to cause a glare or reflection on adjacent residential lots.

The Applicant is also requesting a variance to Section 267-41(D)((5)(3) to disturb non-tidal wetlands buffer. Section 267-41(D)(5)(e) provides:

- (e) Non-tidal wetlands shall not be disturbed by development. A buffer of at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands.

A special exception is a use which has been legislatively predetermined to be conditionally compatible with the uses permitted as of right in a particular zone. Creswell v. Baltimore Aviation Serv., Inc., 250 Md. 712, 719 (1970). The most recent, comprehensive and definitive statement of the law of special exceptions is found in the case of Mossberg v. Montgomery Co., 107 Md. App. 1 (1995), hereinafter referred to as “Mossberg”. Mossberg chronicles the history and development of special exception case law in Maryland and sets forth a definitive statement of the current law regulating a special exception.

The Court of Special Appeals in Mossberg stated:

“ Thus, it is not whether a special exception/conditional use is compatible with permitted uses that is relevant in this administrative proceeding. The legislative body, by designating the special exception, has deemed it to be generally compatible with other uses. In special exception cases, therefore, generally compatibility is not normally a proper issue for the agency to consider. That issue has already been addressed and legislatively resolved. Moreover, it is not whether a permitted use by way of special exception will have adverse effects (adverse effects are implied in the first instance by making such uses conditional uses or special exceptions rather than permitted uses), it is whether the adverse effect in a particular location would be greater than the adverse effects ordinarily associated with a particular use that is considered by the agency.”

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Mossberg stands for the proposition that once the Code requirements have been complied with, a special exception use is transformed into a principal permitted use and the special exception application cannot be denied unless the opposition demonstrates that there are greater adverse impacts at this particular location than other locations in the district.

The Applicant demonstrated compliance with each of the special exception requirements of Section 267-53(A)(2). The testimony of Mr. McClune, Chief of Current Planning for the Department of Planning and Zoning, was that the Department felt that the Applicant complied with the special exception criteria.

It is the finding of the Hearing Examiner that there was no testimony from which to find or conclude that the Applicant has not met the burden of compliance with the special exception criteria.

The special exception criteria require direct access from an arterial or collector road. The Applicant's traffic expert testified that Maryland Route 156 (Aldino Road) was mischaracterized and should be listed as a collector road on the County's Master Road Plan. He testified that Aldino Road is the only state highway in Harford County not classified as a collector road on the Road Plan. He testified that Aldino Road meets the definition of a collector road in the County Road Plan and that Aldino Road operates as a collector road, has the same speeds as a collector roads, the same design requirements, the same striping, the same paving and the same use as a collector road. There was also testimony that accessing the property from Maryland Route 155 would result in much greater environmental damage to the property. A significant wetland would need to be crossed and significant negative impacts would occur to the wetland and the bordering Natural Resource District by accessing MD Route 155. There was no testimony that such a limitation or negative impact would occur accessing the property from Aldino Road. Once again, the Department of Planning and Zoning, after review of these matters, concluded that the Applicant had met its burden.

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Likewise, the final variance requested by the Applicant was a variance from Section 267-41(D)(5)(e) and (6) to disturb a non-tidal wetland buffer. The Applicant's expert witness testified that all of the disturbance would be fully mitigated and the impact is of a minor nature to a small area and merely changed the character of the wetlands from a deciduous wetlands to an evergreen wetlands. The Applicant's expert witness also testified that there are unique characteristics on the subject parcel which would justify approval of the variance. There was also testimony from the Chief of Current Planning that the Staff had reviewed the request to disturb the non-tidal wetland and that the Staff felt that the disturbance was very minor in nature.

Therefore, it is the recommendation of the Hearing Examiner that the special exception and requested variance be granted, subject to the following conditions:

1. The Applicant shall submit a site plan to the Development Advisory Committee for review. The site plan shall be in accordance with attachment 6. Minor changes may be approved by the Director of Planning and Zoning. The plan shall include detailed wetland and buffer delineations.
2. A detailed lighting plan, forest conservation plan and landscaping plan shall also be submitted for review and approval by the Department of Planning and Zoning.
3. A detailed mitigation plan shall be submitted for review and approval by the Department of Planning and Zoning.
4. The Applicant shall obtain all necessary permits, approval and inspections for the golf course and accessory buildings.
5. The driving range is to be an unlighted facility and shall be closed at dusk.
6. The approval does not include a restaurant or catering hall. No receptions, parties or other similar social functions are permitted. This does not preclude the location of a snack bar and facilities to accommodate golf outings.

Date OCTOBER 19, 1998

L. A. Hinderhofer
Zoning Hearing Examiner